

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	18 Cr. 339 (PAC)
	:	
-against-	:	<u>ORDER</u>
	:	
YVETTE LUBRUN,	:	
	:	
<i>Respondent.</i>	:	
-----X	:	

Marie Yvette Lubrun (“Yvette Lubrun”) moves *pro se* to have her “restitution amount reduced or expunged.” ECF No. 388. Her request is **DENIED**.

BACKGROUND

On May 14, 2018, Yvette Lubrun and ten other defendants were charged with conspiracy to commit access device fraud, in violation of 18 U.S.C. § 1029 (“Count One”); conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349 (“Count Two”); and aggravated identity theft, in violation of 18 U.S.C. § 1028A (“Count Three”). Indictment, ECF No. 3. The Indictment alleged that Yvette Lubrun was part of a scheme to unlawfully acquire and use personal identifying information of other people in order to obtain unauthorized access to their personal accounts, such as bank accounts. *Id.*

On April 25, 2019, Yvette Lubrun pleaded guilty to Count Two, pursuant to a plea agreement. Presentence Investigation Report (“PSR”) ¶ 9. As part of the plea agreement, Yvette Lubrun agreed to make restitution to victims of Count Two in an amount ordered by the Court up to \$3,500,000, to be jointly and severally imposed upon the defendant and her co-defendants. *Id.*

On July 25, 2019, this Court sentenced Yvette Lubrun to three years’ probation. Judgment, ECF No. 161. The Court deferred the determination of restitution. *Id.* at 5. On October 29, 2019, the Court entered a global restitution order for all defendants in the total amount of \$2,430,771.05. Restitution

Order, ECF No. 227. Although each defendant is jointly and severally liable with each co-defendant, the Court capped each defendant's restitution liability; Yvette Lubrun's apportioned amount of restitution is \$95,000. *Id.* at 2. "Each defendant's liability for restitution shall continue unabated until either the defendant has paid the apportioned amount . . . , or every victim has been paid the total amount of loss from all the restitution paid by the defendants in this matter." *Id.*

In a letter dated October 17, 2023, Yvette Lubrun asked this Court to "reduce[] or expunge[]" her restitution amount of \$2,430,771.05 because she successfully completed her three years' probation, made strides to "becoming a better person for society and [her] family . . . d[e]spite [her] past mistakes," and "cannot afford to pay the restitution amount."¹ ECF No. 388. The Government commended Yvette Lubrun for her "apparent efforts towards rehabilitation" but opposed the request on October 26, 2023. ECF No. 389.

DISCUSSION

The Court, like the Government, commends Yvette Lubrun on her progress. But a sentence that imposes a restitution order constitutes a final judgment that may be modified only in limited circumstances. *See* 18 U.S.C. § 3664(o). And the Court has no legal basis to modify, at this time, the total restitution amount Yvette Lubrun must pay to satisfy the victims' losses. *See, e.g.,* 18 U.S.C. § 3664(k) (providing that if there is a "material change in the defendant's economic circumstances," the court may "adjust the payment schedule, or require immediate payment in full, as the interests of justice require"); *United States v. Kerzhner*, No. 00 CR 1197 (SJ), 2007 WL 29393, at *2 (E.D.N.Y. Jan. 4, 2007) (finding no authority to modify the total amount of mandatory restitution due). However, the

¹ Yvette Lubrun separately requested that the passport she surrendered on May 23, 2018 be returned. ECF No. 388. The Government and U.S. Probation and Pretrial Services do not oppose that request because her supervisory period ended on July 24, 2022. However, U.S. Pretrial Services sent her passport to the U.S. State Department in October 2022. Yvette Lubrun may submit a request to the State Department for the return of her passport. *See* U.S. Department of State, "Return of Surrendered Passports," <https://travel.state.gov/content/travel/en/passports/legal-matters/surrendered-passport.html>.

Court takes this opportunity to clarify for Yvette Lubrun that she must pay \$95,000—not \$2,430,771.05—before her restitution obligations are satisfied. *See* ECF No. 227.


CONCLUSION

Accordingly, Yvette Lubrun's request to modify the total amount of restitution due is **DENIED**.

The Clerk of the Court is directed to close ECF No. 388.

Dated: New York, New York
December 6, 2023

SO ORDERED



PAUL A. CROTTY
United States District Judge